

MINUTES
BOARD OF ADJUSTMENT
May 6, 2010

THOSE IN ATTENDANCE:

Gary Soule, Chairman
Victor Cohen
Mel Disney
Rick Bliss
Anne Bishop

Jason Jaggi, Senior Planner
Kevin O'Keefe, City Attorney

Chairman Soule called the meeting to order at 5:00 p.m. He welcomed everyone to the meeting, introduced himself and asked that the other members of the Board and staff introduce themselves.

Chairman Soule stated that the members of this Board are appointed by the Mayor and approved by the City's Board of Aldermen and serve without monetary compensation. He stated that the applicant must demonstrate practical hardship with regard to the property in order to justify the granting of a variance. He then advised that this is a duly advertised, duly noted meeting and that the proceedings are of record. He indicated that there is a full compliment of the Board this evening and that four members must vote in favor of the variance in order for it to be granted. He noted that there were two applications to be heard this evening and verified that the applicants were in attendance.

MINUTES

The minutes of the meeting of December 3, 2009 were presented for approval. The minutes were approved, after having been previously distributed to each member.

APPEAL FROM PATRICK & CHRIS WIN FOR THE PROPERTY AT 57 BROADVIEW

Patrick & Chris Win, owners of 57 Broadview, were in attendance at the meeting. Also in attendance were George Johannes, project architect and Gary Feder, attorney representing the owners.

Everyone wishing to speak this evening regarding the appeal was sworn in by the recording secretary.

Chairman Soule asked Jason Jaggi to provide an overview of the appeal.

Jason Jaggi began a PowerPoint presentation. The first few slides provided some background information regarding the proposed project (6,053 square feet new single family residence

excluding the basement, 2.5 stories, attached 3 car garage) and information regarding the subject lot (66' front width; 61' rear width X 160' depth). Jason noted that the standard lot size in Claverach Park is 75 X 160. He advised that the required rear yard setback for this lot is 40 feet and noted that the Claverach Park indentures and Clayton's zoning requirements conflict. He stated that Clayton's zoning regulations allow basements and parking facilities that are completely underground to encroach into the rear yard setback, but must not transverse the property line. He stated that the north portion of the proposed below grade 3-car garage is exposed 16 feet into the required rear yard setback and therefore, the variance request is for 16' from the required rear yard setback of 40 feet. Jason also noted that an impervious coverage increase is not part of this appeal.

Slides depicting an aerial map and site photos were presented.

Chairman Soule asked if the City had any exhibits to present.

City Attorney O'Keefe noted that the City had the following exhibits to offer into evidence:

1. City's Code of Ordinances;
2. Section 405.190 (2) (g) of the Zoning Regulations regarding rear yard setbacks;
3. City's file which includes the applications, correspondence, staff's report and plans.

Chairman Soule asked if there were any objections to these exhibits.

None were received.

Chairman Soule noted that since there are no objections, these exhibits will be entered into the record.

Gary Feder introduced the owners and the architect to the members. He noted that the contractor, Kim Hibbs, was also in attendance as well as the owners of 55 and 59 Broadview, should any of the members have any questions for them. He informed the members that the owners currently live in Richmond Heights and that the existing structure is to be demolished, which the neighbors are happy about. He indicated that the Wins currently have two children with another on the way and they hope to have a fourth in the near future. He stated that they would prefer not to have a detached garage or park in the street. He noted that the house was designed to observe the more stringent rules, so Claverach Park Trustee approval has been obtained. He stated that the size of the house also takes into consideration the strong possibility that Mr. Win's elderly parents will be moving in with them in the future. He indicated that the Board of Aldermen are enthusiastic about the new house, but he is not sure if they are aware of the variance request being sought tonight. He stated that the house will be LEED Certified. At this time, Mr. Feder distributed a sheet depicting three various site plans that show the buildable areas under Clayton's zoning, Claverach Indentures and the combined requirements.

Chairman Soule noted that the sheet will be marked Applicant's Exhibit 1.

Gary Feder noted that the rear yard setback was established so that buildings did not "bump" into their rear neighbors. He stated that what they are dealing with here is a below grade, 3-car garage which is undoubtedly below grade. He stated that staff says this garage violates the setback requirements. Mr. Feder then read the language as found in Section 405.1900 (2) (g) "Basements and parking facilities that are completely underground may encroach into the rear yard setback but may not transverse the property line." He noted that the word "completely" is not underlined in the zoning text as it was in staff's presentation. Mr. Feder then questioned why they are here at all and questions the meaning of "completely underground". He stated that staff's contention is that if any of the structure is visible, it does not meet zoning. He stated that this is a matter of interpretation. He noted that the average width of the subject lot (65' along the front and 61' along the rear, which is 20% narrower than the typical Claverach Park lot) is smaller than many of the lots in Claverach Park and staff recognizes that fact. Mr. Feder indicated that the spirit of the ordinance in no way is violated by this and that to comply with these regulations would keep them from having a 3-car garage. He noted that if the building were extended to the south, it would have a negative impact on trees and that a detached garage would violate Claverach Park indentures. He again questioned the need for a variance at all. He stated if a variance is needed, he believes the hardship is the lot size. He stated that the Wins are anxious to move to Clayton and that they need this and desire to move forward with their project to the Plan Commission/ARB level and that if the variance is not granted, it is likely that they will sell the property.

Mr. Johannes commented that technically, this is an underground garage and there will be no view of it at all from the south or west and probably not seen at all. He stated that by doing this, they can maximize the pervious area of the site and that this plan falls into place because of the narrowness of the site. He stated that the owners to the south do not want the garage moved further to the south.

Rick Bliss asked if the garage doors will be visible with the high retaining wall on the north side of the property.

Mr. Johannes indicated that he did not believe so.

Rick Bliss asked the height of the wall.

Mr. Johannes replied "11 feet".

Rick Bliss asked if the garage doors will be seen from the Neville's yard (55 Broadview).

Mr. Johannes replied "no".

Rick Bliss asked if the garage doors will not be seen by someone who is north of the wall.

Mr. Johannes indicated that is correct.

Rick Bliss asked if any consideration was given to lowering the garage floor by 5 feet.

Mr. Johannes indicated that that is too deep and would result in a very deep driveway (beyond 20% slope).

Rick Bliss asked the legal definition of “below grade”.

Kevin O’Keefe stated that to his knowledge, there is no definition of “below grade” in the Zoning Code; however, he would believe it to mean below the finished surface of the ground. He clarified that the wall will not interfere with visibility of the garage doors, the fence would (as the elevation of the neighbor’s property is above the top of the wall).

Mr. Johannes concurred. He mentioned the 6’ high privacy fence and that the plan presented depicts existing grade. He stated the entire structure is below the existing grade.

Kevin O’Keefe questioned the grade after construction, as portions of the structure are not underground.

Jason Jaggi commented that the term staff is using is “underground”.

Chairman Soule asked if there were any other comments or questions.

Mr. Feder asked if any of the members had any questions for the owners.

None were received.

Kevin O’Keefe referred to the language in the Ordinance which states “completely underground”.

Mr. Feder indicated that this seems to seek appeal from a code enforcement decision.

Kevin O’Keefe stated that while this in no way is meant to offend this applicant or any applicant for that matter, personal circumstances of an applicant (number of children, number of vehicles, etc.) is not a decision factor, although he is not surprised to hear that a 3-car garage is the norm now.

Chairman Soule indicated that he appreciates the comments.

Mr. Feder stated that the language here is a common sense meaning and they are not here for an interpretation; they have accepted staff’s requirement to file an appeal, but felt the language issue was worth mentioning. He stated that he realizes decisions cannot be made based on personal matters and that the lot size is a major contributor to the reason the variance is needed (61’ width at the rear versus the standard width of 75’). He added that there will be no negative impact on the neighborhood and they are here strictly due to the size of the lot.

Chairman Soule commented that what this Board is being asked to consider is a 16' variance from the 40' required rear yard setback.

Rick Bliss stated that focus is being made on the standard lot size for Claverach Park and asked staff to comment on the size of the house. He asked if 6,000 square feet is larger than most houses in Claverach Park.

Jason Jaggi indicated that he would agree, although staff did not look at square footages of existing homes. He stated that the two full finished levels plus the finished attic space contributes to the square footage.

Chairman Soule asked Jason to speak to the practical difficulties/unnecessary hardships.

Jason Jaggi asked the members to refer to his staff report, indicating that the Board members need to determine if they have met that criteria.

Kevin O'Keefe stated that staff does not presume to tread into the Board's responsibilities.

Jason Jaggi stated with regard to the lot size, width in particular, this lot is smaller than some others in Claverach Park, but not the smallest and that the depth of this lot is of standard size for Claverach Park.

Chairman Soule asked if the spirit of the ordinance is met with the exception of the north side.

Jason Jaggi concurred; he stated that exposing the garage is what triggered the need for a variance.

Chairman Soule asked about negative impact this may or may not have.

Jason Jaggi referred to the earlier testimony about screening.

Chairman Soule moved to grant a 16 foot variance from the 40 foot rear yard setback.

Kevin O'Keefe asked that a condition be placed to require the structure be constructed in accordance with the plan submitted so as not to vote on a "blanket" variance.

Chairman Soule amended his motion to grant the 16 foot variance from the 40 foot rear yard setback provided that construction is in accordance with the plan submitted to the City. The motion was seconded by Victor Cohen and received the following roll call vote: Ayes: Chairman Soule, Victor Cohen, Rick Bliss, Anne Bishop. Nays: Mel Disney.

Motion carried. The variance was granted.

APPEAL FROM SIMON KATZ FOR THE PROPERTY AT 8137-41 MARYLAND AVENUE

Simon Katz, owner, was in attendance at the meeting.

Jason Jaggi began a PowerPoint presentation, indicating that this is reconsideration of the previous variance that was granted back on May 7, 2009. He reminded everyone that this property has been the subject of three variance requests, with Mr. Katz having only been involved in the previous request. Jason explained that on May 7, 2009, the Board of Adjustment granted a one-space parking variance at this location in association with the renovation of the existing structure and a 352 square foot rear addition. Since that time, the applicant has received architectural review approval and a building permit has been issued. On April 9, 2010, the City issued a Stop Work Order on the job due to the construction activity not proceeding according to approved plans. Shortly afterward, staff met with the property owner and the contractor regarding this situation and explained to them that the parking variance previously granted did not apply to a building which has been substantially removed and was based on the parking requirements associated with a small addition. At the direction of staff, the property owner has filed an appeal to the Board of Adjustment seeking relief from the City's ordinances as they apply to a substantially reconstructed building. Under this scenario, the full provisions of the off-street parking requirements are to be provided. The proposed plans for the site in terms of parking area and building size are not substantially different than what was previously presented to the Board of Adjustment. Jason noted that the project is essentially the same, but the scope of construction changed whereas previously, the project only included some demolition and a small addition and now, most of the building has been demolished.

Anne Bishop asked how many parking spaces were previously there. She asked if the previous variance was to reduce the required number of parking spaces by one space.

Jason Jaggi confirmed. He stated that the 352 square foot addition is what triggered the need for the additional parking space which the applicant did not provide and therefore, was the subject of the previous variance request which was approved by this Board. Jason added that now, the structure will be practically new and therefore, 15 parking spaces are required by ordinance (1 space/300 square feet). He indicated that valet service will still be provided and that staff looked at this in terms of longevity and believes that the parking demand is less than before. He reminded the Board that the zoning regulations do not recognize stacked parking spaces.

Rick Bliss commented that there are only 5 pull-in spaces, but only a 5 space variance is being requested (although 15 spaces are required by ordinance).

Chairman Soule mentioned that Mr. Katz is only asking for a 5 space variance, but he believes that staff is suggesting the Board approve more (10 spaces) as a special condition.

Anne Bishop asked if this would be conditional only with Mr. Katz as the owner.

Jason Jaggi indicated that variances run with the land, not with an owner.

Kevin O’Keefe indicated that variances are not dependant upon ownership or use.

Jason Jaggi stated that the Board can impose conditions of approval.

Kevin O’Keefe commented that within the City’s definition, only 5 spaces are being provided under this plan.

Jason Jaggi concurred.

Kevin O’Keefe asked Jason if double stacking is proposed.

Jason Jaggi replied “yes”.

Kevin O’Keefe commented that the variance is to allow the painting and operation of the lot for 10 cars (5 double stacked spaces).

Jason Jaggi commented that the owner is attempting to maximize parking.

Chairman Soule asked if Mr. Katz would be prohibited from stack parking if the Board approves a 5 space variance.

Jason Jaggi indicated that a new owner could come in and re-stripe the lot.

Kevin O’Keefe presented the idea to the Board to condition that the lot be striped and operated for 10 vehicles for any user even though that number does not meet the City’s parking requirements.

Jason Jaggi stated that he believes the use will improve the block.

Rick Bliss referred to a previous variance approval for Oceano Bistro, in which the Board required that they enter into a lease agreement with regard to parking.

Jason Jaggi concurred, stating that restaurant use is intensive.

Rick Bliss asked if the parking space in front of Mr. Katz’s current location will revert back to a metered space.

Jason Jaggi replied “yes”.

Mel Disney asked if the office building to the north of the police building is required to lease spaces in Metro’s garage.

Jason Jaggi replied “yes”.

Kevin O’Keefe presented the following City exhibits with regard to this variance request:

1. City's Code of Ordinances;, specifically Section 405.3620;
2. Applicant's appeal & corresponding plans; and
3. Staff's report

Chairman Soule asked if there were any objections to these exhibits.

None were received.

Mr. Katz thanked the Board and indicated that the City has been very helpful during this process.

Mel Disney asked if the property is on two separate lots.

Mr. Katz stated that he thought it was only one lot, but addressed 8137, 39 & 41 Maryland Avenue (now going by only 8141 Maryland).

Mel Disney stated that the building is on two separate lots and asked if the City would require a lot consolidation.

Jason Jaggi stated that staff has not looked at that.

Mel Disney mentioned that this has nothing to do with the variance. He asked if a 9' wide parking space is common.

Jason Jaggi replied "yes".

Mel Disney indicated that the building had a "notch" in the back, which area could provide parking for two more vehicles.

Jason Jaggi stated that area is not counted as it is used for trash storage.

Mr. Katz advised the members that the building was moved back 6 feet, but the notched area is still for trash storage.

Mel Disney commented that he is simply trying to find more parking spaces. He asked if Mr. Katz would trade the 325 square foot addition for 2 additional parking spaces.

Jason Jaggi asked Mel if he was suggesting a new notch.

Mel Disney replied "yes".

Mr. Katz indicated that there is no guarantee of trash pick up time.

Kevin O'Keefe stated that staff is not recommending the striping of the front trash area.

Mel Disney stated that he is simply attempting to generate more parking.

Mr. Katz reminded the members that tandem (stacked) parking is not recognized by the City's code and that staff suggested the variance request be presented this way.

Being no further questions or comments, Chairman Soule made a motion to grant a variance to allow a reduction of 10 parking spaces with the understanding that the lot will be striped to accommodate 10 tandem parking spaces. Anne Bishop seconded the motion.

Rick Bliss asked if it is an "understanding" or a "requirement" that the lot be striped to accommodate 10 tandem spaces.

Kevin O'Keefe stated that he cannot assume the Chairman's intent, but "understanding" and "requirement" do not have the same meaning to him.

Chairman Soule stated that his intent was to leave the striping issue to the owner.

Kevin O'Keefe stated that he believed staff wanted it to be a requirement.

Jason Jaggi concurred.

Chairman Soule amended his previous motion to require the lot be striped to accommodate 10 tandem spaces (tandem spaces required).

Mel Disney asked if the motion needs to include a requirement for valet parking.

Kevin O'Keefe replied that decision would be up to the members. He reminded the members that variances run with the land forever.

Mel Disney commented that if the use changes resulting in less required parking, this parking will still be acceptable.

Kevin O'Keefe stated that he is aware this Board previously denied the use of this space as an office.

Anne Bishop seconded the amended motion. The motion carried unanimously. A requirement for valet parking was not part of the motion.

Being no further business for the Board of Adjustment, this meeting adjourned at 6:55 p.m.

Recording Secretary